

## **DANESS DEVELOPERS SOFTWARE LICENSE AGREEMENT**

**This Agreement**, is made between the University of Chicago as operator of Argonne National Laboratory under Contract No. W-31-109-ENG-38 ("Licensor") with the U.S. Department of Energy ("DOE"), and the undersigned ("Licensee").

### **1. Definitions.** The following definitions apply herein:

- (a) "Licensed Software" means computer software in source code generally referred to as "DANESS (Dynamic Analysis of Nuclear Energy System Strategies) Version 2.2."
- (b) "Derivative Software" means the object code that results from Licensee's compilation of modified or unmodified Licensed Software or any portion thereof.
- (c) "Developer Products" means computer software products that incorporate Derivative Software.
- (d) "Software Corrections" means changes intended to correct a deficiency or malfunction in the Licensed Materials.
- (e) "License Fee" is a payment calculated in accordance with Exhibit A - Price List, attached hereto and incorporated herein.

### **2. License Grants**

- (a) Subject to the terms and conditions hereof, Licensor hereby grants and Licensee accepts, the non-exclusive rights and a license to: i) internally use and reproduce Licensed Software in support of Licensee's efforts to develop Derivative Software; ii) use, reproduce, modify, and compile Licensed Software for the purpose of creating Developer Products
- (b) The rights and license in (a) above are subject to the following limited license granted by Licensor to the U.S. Government:

The Government is granted for itself and others acting on its behalf a paid-up, non-exclusive, irrevocable worldwide license in the Licensed Software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government. Beginning five (5) years after March 2004, unless the U.S. Department of Energy grants an extension of time, the Government is granted for itself and others acting on its behalf a paid-up, nonexclusive, irrevocable worldwide license in the Licensed Software to reproduce, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

- (c) Licensee agrees, from time to time, as they become available, to deliver to Licensor and hereby grants to Licensor and the U. S. Government an irrevocable, paid-up nonexclusive license to use, copy, modify and distribute to others Software Corrections, new or improved software models, and supporting libraries or modules developed by Licensee.

### **3. License Term**

- (a) The right and license granted herein shall commence on the date the Licensed Software is electronically delivered. Licensor shall make the Licensed Software available for electronic delivery promptly following receipt by Licensor of the License Fee and this License signed on behalf of Licensee. Magnetic media will be shipped at the Agency's expense upon written request.

- (b) Unless earlier terminated as provided in Section 5, this Agreement shall continue in perpetuity.

### **4. Support**

Licensor shall have no obligation to support use by Licensor or by third parties of Licensed Software or Developer Products.

### **5. Termination**

- (a) This Agreement shall be subject to termination by Licensor if Licensee becomes insolvent, declares bankruptcy, or a receiver or trustee is appointed for Licensee. Licensee may terminate this Agreement at any time without cause by destroying Licensed Software together with all copies and adaptations. In addition, either party may terminate this Agreement with written notice upon the occurrence of a default or breach by the other party in any of its obligations under this Agreement, provided such default or breach continues for more than thirty (30) days after receipt by such

other party of notice; provided, however, there shall be no such cure period with respect to any breach of Licensee's obligation under Section 8 hereto.

(b) Upon termination of this Agreement for breach by Licensee, Licensee agrees to destroy the Licensed Software together with all copies and adaptations, and to certify to Licenser that it has destroyed same, except that Licensee will have the right to maintain one copy of Licensed Software and/or Developer Products but only for the purpose and to the extent reasonably necessary for Licensee to provide support and maintenance to end users of Developer Products. Upon termination of this Agreement, end users of Derivative Software as part of Developer Products who are not in default may continue to use Derivative Software under the terms of their license from Licensee.

## **6. Limited Warranty**

(a) Licenser warrants for thirty (30) days after shipment that any recording media by which Licensed Software is furnished is free of manufacturing defects and damage provided that the media has been properly installed by Licensee. Licensee does not warrant that any Licensed Software will meet Licensee's requirements nor will be error free. As Licensee's sole and exclusive remedy for breach of the warranty herein, Licenser will provide a suitable replacement media containing the Licensed Software.

(b) EXCEPT AS PROVIDED ABOVE, NEITHER THE UNITED STATES, NOR THE UNITED STATES DEPARTMENT OF ENERGY, NOR THE UNIVERSITY OF CHICAGO, NOR ARGONNE NATIONAL LABORATORY, NOR ANY OF THEIR EMPLOYEES, MAKES ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ASSUMES ANY LEGAL LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, COMPLETENESS OR USEFULNESS OF ANY INFORMATION, APPARATUS, PRODUCT OR PROCESS DISCLOSED FOR ANY PURPOSE (WHETHER OR NOT KNOWN, OR HAVING REASON TO KNOW, HAVING BEEN ADVISED, OR OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE) OR THAT ITS USE WOULD NOT INFRINGE PRIVATELY OWNED RIGHTS. IN ADDITION, SAID PARTIES EXPRESSLY DISCLAIM ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN LICENSEE WITH RESPECT TO THE LICENSED SOFTWARE, OR ANY PORTION THEREOF.

(c) IN NO EVENT WILL SAID PARTIES BE LIABLE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES RESULTING FROM EXERCISE OF THIS AGREEMENT OR LICENSEE'S USE OF THE LICENSED SOFTWARE. THE PARTIES ACKNOWLEDGE THAT THE LICENSEE FEE REFLECTS AN AGREED ALLOCATION OF RISK BETWEEN THE PARTIES AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.

(d) Licenser is unaware of any third party intellectual property rights that the Licensed Software will infringe. Licensee's sole and exclusive remedy with respect to allegations or proof of infringement of third party intellectual property rights by the Licensed Software and/or its use by Licensee, regardless of any alleged negligent misrepresentation or any other alleged breach of this Agreement by Licenser, to the exclusion of all other remedies therefore will be for Licenser to refund to Licensee the License Fee.

## **7. Indemnity**

Licensee indemnifies the U.S. Government, the University of Chicago, Argonne National Laboratory, and their trustees, officers, employees and agents, for all damages, costs, and expenses, including attorneys' fees, arising from personal injury or property damage to third parties occurring as a result use of the Licensed Software by Licensee, including but not limited to the making, using, selling, or exporting of products, processes, or services derived therefrom. This indemnification shall include, but not be limited to, indemnification for any product liability. Licensee's indemnification obligations arising hereunder shall apply irrespective as to whether such damages, costs and expenses arise or are alleged to arise, directly or indirectly, from the participation, whether active or passive, or negligence, whether ordinary or gross, of such parties, their employees, agents, or other personnel.

## **8. Protection of Licensed Software**

Except as expressly provided herein, Licensee receives no rights to and will not sell, assign, lease, market, transfer, encumber, or otherwise suffer to exist any lien or security interest on, or allow any third person, firm, corporation, other entity to use, copy, or reproduce in whole or in part in any manner the Licensed Software. Licensee shall use its best efforts to insure that no unauthorized copy, in whole or in part, in any form shall be made of the Licensed Software. No sublicense to Derivative Software as part of Developer Products shall provide any right (express or implied) to reproduce Derivative Software except for archival purposes, or to decompile, reverse engineer, modify or prepare derivatives of Derivative Software.

## **9. Taxes**

Licensee will pay or reimburse all federal, state, local or other taxes, including but not limited to, sales, use, added value, or excise taxes, or amounts levied in lieu thereof, based on fees and charges payable under this Agreement or based on Licensee's use of the Licensed Software.

## **10. EXPORT**

LICENSEE AGREES AND CERTIFIES THAT IT WILL NOT EXPORT OR RE-EXPORT, DIRECTLY OR INDIRECTLY, THE LICENSED SOFTWARE, OR ANY PORTION THEREOF, OR ANY SYSTEM CONTAINING LICENSED SOFTWARE TO ANYONE OUTSIDE OF THE UNITED STATES WITHOUT FIRST COMPLYING STRICTLY AND FULLY WITH ALL EXPORT CONTROLS THAT MAY BE IMPOSED ON THE LICENSED SOFTWARE BY THE UNITED STATES GOVERNMENT OR ANY OTHER COUNTRY.

## **11. Assignment**

Except as expressly provided herein, Licensee may not assign, sublicense, or otherwise transfer its rights, duties or obligations under this Agreement to any other party or entity, in whole or in part, without the prior written consent of Licensor.

## **12. Entire Agreement**

This Agreement constitutes the entire agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. No modification or amendment to this Agreement will be valid or binding unless reduced to writing and duly executed by the party or parties to be bound thereby.

## **13. Notices**

Notices to Licensee shall be sent to the address specified beneath Licensee's signature and to Licensor to: Ms. H. Carol Bernstein, General Counsel and ITD Director, Argonne National Laboratory, 9700 South Cass Avenue, Argonne IL 60439. Notice shall be deemed effective on the date of delivery if delivered by personal delivery (including overnight mail by private carrier) or on the date of mailing if delivered by certified mail.

## **14. Miscellaneous**

(a) Nothing in this Agreement shall be construed as conferring any right to use in advertising, publicity, or other promotional activities any name, tradename, trademark, or other designation of any party hereto or of Argonne National Laboratory, the University of Chicago, the U.S. Department of Energy, the U.S. Government, or any employees thereof, and any contraction, abbreviation, or simulation of any of the foregoing.

(b) The headings of the several sections of this Agreement are included for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

(c) In the absence of applicable Federal law, this Agreement shall be interpreted and construed in accordance with the laws of the State of Illinois.

(d) The failure or forbearance by Licensor or Licensee to enforce any right or claim against the other party shall not be deemed to be a waiver by Licensor of a claim or right or claim hereunder. The waiver by Licensor or Licensee of a breach hereof shall not operate or be construed as a waiver of any subsequent breaches of the same or any other provision.

(e) If any of the provisions of this Agreement are determined to be invalid or unenforceable, such invalidity or unenforceability will not invalidate or render unenforceable the remainder of the Agreement, but rather the entire agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the parties hereto shall be construed and enforced accordingly. The parties hereby acknowledge that if any provision of this Agreement is determined to be invalid and unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, be deemed valid and enforceable.

**IN WITNESS WHEREOF**, the parties have signed this Agreement on the dates indicated below.

**LICENSEE**

Company Name: \_\_\_\_\_

By \_\_\_\_\_

(Signature)

Name: \_\_\_\_\_

(Typed)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ADDRESS:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(City, State, Zip Code, Country)

---

**TO BE COMPLETED BY LICENSOR:**

**NUMBER OF COPIES:** \_\_\_\_1\_\_\_\_

**LICENSE FEE PAID:** \_\_\_\_\_

**DATE RECEIVED:** \_\_\_\_\_

**SITE LICENSE:** \_\_\_\_ YES \_\_\_\_ NO

**IPA #** \_\_\_\_\_

---

☐ Check here if you would like Argonne National  
Laboratory to countersign this license

## **Exhibit A - Price List**

(Pricing is subject to change without notice)

**The cost of a Developer's License is a one-time payment of \$20,000 for the source code and an one-time payment of \$5,000 for each copy requested. For example, a request for 3 users will have a one-time fee license fee of \$35,000 (\$20,000 for the source, plus 3 users x \$5,000). The Developer's License includes**

- 1) The source code**
- 2) An internal site license for unlimited use of that copy within the organization**
- 3) Admission to the DANESS User's Group, including the basic training course.**

Questions on licensing may be addressed by contacting the Argonne Software Licensing Coordinator via email at [betten@anl.gov](mailto:betten@anl.gov)